

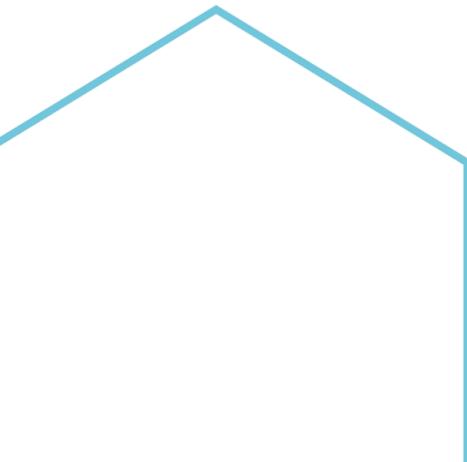


# **South Dakota Long Term Care Ombudsman Program Report for 2021**

**October 1, 2020 – September 30, 2021**



The information within this report demonstrates efforts in protecting and advocating for the rights of individuals residing in long term care communities throughout South Dakota.



# Message from the State

## Long Term Care Ombudsman

I am honored to present this report of the South Dakota Long Term Care Ombudsman Program for federal fiscal year (FFY) 2021. This report is presented in accordance with the federal regulations and the Older Americans Act.

Long Term Care Ombudsman (LTCO) are mandated to provide services to protect the health, safety, welfare, and rights of individuals residing in long term care facilities. The South Dakota State Long Term Care Ombudsman Program (LTCOP) provides services to board and care homes (assisted living centers, 60+ transitional care units, community living homes), nursing homes (skilled and non-skilled), registered residential centers, and long term geriatric psychiatric care centers.

A certified, designated, dedicated, and passionate team of seven Ombudsman support and promote a person-centered approach to advocacy. Ombudsman work for resolutions that preserve dignity, health, rights, safety, and welfare of this vulnerable and valued population of South Dakota. It is our belief that person-centered care leads to better outcomes for residents and contributes to higher staff engagement and retention.

The Administration for Community Living (ACL) established standards applicable to the training required for representatives of the “Office of Ombudsman” representatives in November 2019. The standards specify content and minimum hours of training. The minimum requirement to certify a LTCO is 35 hours of initial certification training. Maintaining designation requires annual in-service training of at least 18 hours. Content coverage as well as a percentage of various study platforms are designated in the requirements. The LTCOP meets the standards set forth by ACL for training and education. The program utilizes the National Ombudsman Resource Center’s on-line training curriculum as a portion of the training. The training includes, but is not limited to,



Ombudsman –  
is a Swedish word

Ombudsman –  
(Om – budz – man)

Ombudsman – means  
advocate or  
representative of the  
people

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the following areas: history and role of the LTCOP, interviewing techniques, problem solving process, resident rights, involuntary discharge, policies, procedures, review of relevant laws, review of Older Americans Act and the Olmstead Act, and culture change.

The LTCOP utilizes a person-centered, person-lead approach by obtaining consent from the resident or resident representative prior to starting any action on concerns. The LTCOP also encourages self-advocacy as a first step to finding a resolution.

Donna Fischer, Certified Dementia Practitioner

State Long Term Care Ombudsman

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## **Ombudsman Code of Ethics as Developed by**

### **The National Association of State Long Term Care Ombudsman**

- ❖ The ombudsman provides services with respect for human dignity and the individuality of the resident, unrestricted by considerations of age, social or economic status, personal characteristics, or lifestyle choices.
- ❖ The ombudsman respects and promotes the resident's right to self-determination.
- ❖ The ombudsman makes every reasonable effort to ascertain and act in accordance with the resident's wishes.
- ❖ The ombudsman acts to protect vulnerable residents from abuse and neglect.
- ❖ The ombudsman safeguards the resident's right to privacy by protecting confidential information.
- ❖ The ombudsman remains knowledgeable in areas relevant to the long term care system, especially regulatory, legislative information, and long term care service options.
- ❖ The ombudsman acts in accordance with the standards and practices of the Long Term Care Ombudsman Program and with respect for the policies of the sponsoring organization.
- ❖ The ombudsman will provide professional advocacy services unrestricted by personal beliefs or opinions.
- ❖ The ombudsman participates in efforts to promote a quality, long term care system.
- ❖ The ombudsman participates in efforts to maintain and promote the integrity of the Long Term Care Ombudsman Program.
- ❖ The ombudsman supports a strict conflict of interest standard that prohibits any financial interest in the delivery or provision of nursing home, board and care services, or other long term care services that are within their scope of involvement.
- ❖ The ombudsman shall conduct the role in a manner that will strengthen the statewide and national ombudsman network.<sup>1</sup>

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<sup>1</sup>[Code of Ethics | NASOP nasop.org/about/code-of-ethics/](https://www.nasop.org/about/code-of-ethics/)

## Quick Facts FFY 2021

- 105 Complaint related visits
- 1028 Routine visits to facilities were completed
- 1328 Incidents of information and assistance to individuals were provided
- 1036 Incidents of information and assistance/consultation to facility staff were provided
- 56 Resident council meetings were attended
- 27 Facility surveys were participated in



# **Authority, Purpose, and Philosophy**

## **Authority**

The LTCOP is authorized under the Older Americans Act and is organizationally located within the Department of Human Services Division of Long Term Services and Supports.

In accordance with the Ombudsman Final Rule of 2015, standards have been developed to ensure a timely response to complaints by the state and/or local long term care ombudsman. The LTCO will use their best efforts to initiate investigations of complaints in a timely manner to resolve the complaint to the satisfaction of the resident. The LTCOP is not an emergency response entity.

## **Purpose**

The purpose of the LTCOP is to protect and improve the quality of care and quality of life for residents of long term care facilities through advocacy for, and on behalf of, residents. The Older Americans Act directs the LTCOP to receive, investigate and resolve complaints made by, or on behalf of, individuals who are residents of long term care facilities. The primary focus of the LTCOP is the resident; therefore, the Ombudsman advocates on behalf of and at the direction of the resident. Complaints may relate to the actions, inactions, or decisions of providers or their representatives, public or private agencies, guardians or others that may adversely affect or be perceived by the resident to adversely affect the health, safety, welfare, or rights of residents. The LTCO is available to any resident of a long term care facility in the state of South Dakota.

The Older Americans Act requires the long term care ombudsman program to “analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, policies and actions that relate to the health, safety, welfare and rights of the residents, with respect to the adequacy of long term care facilities and services in the State.”

## **Philosophy**

The LTCOP is a person-centered advocacy program. The ombudsman advocates, mediates, investigates, and educates residents as well as others and has a responsibility to act in situations involving vulnerable individuals. The ombudsman advocates by providing information, assisting in problem solving, and by promoting individual and group self-advocacy skills.

## Roles and Collaboration

The State and Regional LTCO provide services to protect the health, safety, welfare, and rights of residents living in long term care facilities. The South Dakota Long Term Care Ombudsman (SLTCO) is responsible for providing leadership, planning, and direction for the ombudsman program to include program management, development of policies and procedures and maintaining adherence to the Ombudsman Code of Ethics. The SLTCO screens, trains, coaches, supervises, evaluates, and provides direction to Regional Ombudsman.

The primary focus of the LTCO role is conducting routine visits to facilities to fulfill the federal mandate of providing regular and timely access to the Ombudsman Program. Routine visitation to individuals residing in long term care helps develop a working relationship of trust where individuals share their concerns and request assistance in increasing the quality of care. Regional Ombudsman make unannounced visits to facilities, conduct complaint investigations, make unannounced complaint visits, support resident and family councils, participate in federal and state inspection surveys, inform the public, and provide community education. These activities work in tandem to ensure the Regional Ombudsman maintain a presence in facilities and advocate for the rights and interests of residents. Additionally, regularly providing information and assistance regarding long term care issues to the public, residents and staff of long term care facilities, community organizations and other interested parties fall under duties to be carried out by the ombudsman program. The second focus is the Regional Ombudsman providing consultations, technical assistance, brainstorming, and collaboration with facility staff to develop a cohesive working relationship which strengthens the Ombudsman ability to best advocate for the residents. These consultations to facility staff continue to be impacted by staffing changes highlighted by the pandemic.

The SLTCO participates in the Medicaid Fraud Control Unit's quarterly liaison meetings, advocating for the rights of residents. The Attorney General's Medicaid Fraud Control Unit (MFCU) detects, investigates, and prosecutes fraud and abuse by providers of medical services to recipients of Medicaid. The formal mechanism to exchange case data, information, and reports between the Department of Health, Department of Social Services, Department of Human Services, and Medicaid Fraud Control Unit is held in the Memorandum of Understanding between the agencies. The purpose of this memorandum is to discuss and refer potential cases between interested agencies, address concerns and problems between agencies. The Ombudsman Program is prohibited from disclosing the identity of a complainant or resident unless the program has written consent from the resident, oral consent from the resident, which is documented in writing, written consent from the resident's legal representative, or a court order requiring disclosure. [Title 42 Code of Federal Regulations part §1321.51](#), states that no information about an older person can be disclosed without informed consent, unless disclosure is required by court order or for program monitoring by authorized agencies.

During federal fiscal year 2021, a survey was conducted in partnership between the Department of Human Services and the Department of Health to determine anything the State could assist long term care providers with to help ease the situation(s) COVID-19 caused and/or highlighted. In response to the survey, the LTCOP developed an infection control video to share with visitors of long term care facilities. The video was also shared with facilities to help aide in educating visitors and protecting residents. Additionally, the LTCOP developed a best practices flyer for visitation during the pandemic and continue to work with the Department of Health to facilitate visitation.

The SLTCO participates in various groups to assist in carrying out the mission of the Ombudsman Program, which include:

- ❖ South Dakota Dementia Coalition
- ❖ South Dakota Long Term Care Collaboration Workgroup
- ❖ The National Association of State Long Term Care Ombudsman Programs
  - Serving as secretary
- ❖ National Council of Certified Dementia Practitioners
- ❖ Community of Practice
- ❖ National Consumer Voice
- ❖ Uniting Nursing Homes in Tribal Excellence (UNITE) collaborative
  - Honorary Member

## Advocacy in Action

Factual representation of one individual's experience:

Thomas\* was living with a brain injury at home with supports in place. When this was no longer a viable option, he moved into an assisted living facility. As a result of the trauma to his brain, Thomas exhibited increased mental health symptoms as well as sensory difficulties. Thomas was very specific about the timing and process of all cares being provided, including showering. Showering in a specific way was very important due to the act of water hitting his head caused him pain and sensory overload. Staffing in the assisted living was not adequate to meet his needs, which caused Thomas to be frustrated resulting in a spiral of anxiety and concern. In this state, Thomas would cry, talk fast, and often make an exorbitant number of calls (for example 1-2 calls per minute for extended periods of time) to various entities, such as the police department and ombudsman program, to discuss his concerns.

Thomas experienced a mental health event and was accepted into an acute mental health facility for medication adjustment and overall needs assessment. The acute stay turned into a longer term stay of several months. After spending several months at the mental health facility, the social worker assisting with discharge was having a difficult time finding alternative living arrangements to meet Thomas's needs. The LTCOP became very involved in advocating for a less restrictive placement. Thomas had no natural family or community support system. The LTCO worked closely with a facility that had experience supporting residents with increased needs, the possibility of a private room, and private bathroom, which were very important to Thomas.

Thomas was accepted and admitted to this nursing facility. The LTCO continued to follow Thomas closely. Thomas expressed that he was happy in his current facility. He noted that the food was good, the staff were nice to him and assisted him when needed, and he also had his room set up like he wanted. It was very important that he had a private room with a private bathroom. This nursing facility accommodated the request and understood that having a roommate would not be in his best interest.

Thomas no longer makes an exuberant number of phone calls, which shows his improved quality of life. This facility proved to be a good match for Thomas's overall needs. Staff developed a person-centered care plan. Social services as well as other staff were available to assist in times when Thomas had increased anxiety. It was a good placement option for Thomas, by his report.

### Factual representation of one individual's experience:

The LTCOP received a call from Brad\* whose sister-in-law Jane\* lived in an assisted living community. The rooms in the assisted living community resembled a suite, larger in size with an apartment type set up. Jane, who is a younger individual, has a condition that affects her brain and movements and is progressive. The assisted living staff called Brad, durable power of attorney, to consider nursing home placement as Jane was depending on her neighbor, another resident, for assistance, in addition to obtaining increased assistance from staff members. Jane was very distraught with the idea of needing nursing home care. She has many family members, including teenage children, who would visit frequently, and her current living arrangements were extremely conducive for comfortable visits.

Brad called the LTCOP with their concerns. During the conversation, Brad stated that Jane would be more comfortable talking with a female LTCO. Jane's assisted living was assigned to a male LTCO. With a person-centered approach, a female LTCO from another area joined the male LTCO at the assisted living and they both would advocate, if Jane agreed.

Both LTCO were able to meet with Jane and Brad to discuss the issues, explain the ombudsman program, and explain the role of each LTCO attending the meeting with the two of them. The LTCO gained permission from Jane to advocate to the assisted living staff, including the facility administrator, for remaining in the assisted living.

The LTCO discussed possible solutions to help Jane remain in her current living arrangement for as long as possible. Items discussed included: targeted training for the specific medical condition and how to best serve Jane as well as brainstorming on how the assisted living could continue to meet Jane's needs. The assisted living also had a memory care unit, which was separate from the larger assisted living. It was a smaller setting with more staff available. Everyone agreed to try a move where Jane would have a room in the memory care unit, which would give Jane a more supportive environment for her needs. Both Jane and Brad were grateful to the LTCOP team for advocating for Jane's needs. Her family is able to have comfortable visits with her and this move has been successful as of January 2022.

### Factual representation of one individual's experience:

Liz\* contacted the LTCOP on behalf of her mother, Agnes\* who resided in a memory care unit of an assisted living community. Liz as well as Agnes's husband, Robert\*, expressed concerns with Agnes's overall care during the pandemic. Robert was unable to visit Agnes very often or meaningfully during the pandemic restrictions. When he was able to visit, he had concerns for her appearance and overall care. Family told the LTCO that Agnes was also experiencing a sharp decline in her cognitive abilities, which they felt was a result of lack of visitation and activities.

The LTCO and family discussed with assisted living administration the necessity of meaningful and familiar kinship ties, and further educated the facility administration on “essential caregiver/support person visitation” and its importance. The LTCOP was able to help the family demonstrate the need for increased meaningful visitation as well as help the assisted living administration understand how to accommodate the requests successfully and safely.

\*Names have been changed to protect the confidentiality of the individuals.

## Complaint Category Definitions as Determined by Administration for Community Living

The following terms as defined by the Administration for Community Living (ACL) specifically as they relate to Ombudsman reporting.

**Complaint** – An expression of dissatisfaction or concern brought to, or initiated by, the Ombudsman program which requires Ombudsman program investigation and resolution on behalf of one or more residents of a long term care facility.

**Abuse, Gross Neglect and Exploitation (Code A)** – Serious complaints of willful mistreatment of residents by facility staff, resident representative/family/friend, other residents or an outside individual. Types of abuse include physical abuse, sexual abuse, psychological abuse, financial exploitation, and gross neglect.

**Access to Information (Code B)** – Complaints against the facility regarding access to information made by or on behalf of the residents. Use for willful interference with Ombudsman duties. Types of access include access to information and records, language and communication barriers and willful interference.

**Admission, Transfer, Discharge, Eviction (Code C)** – Complaints against the facility involving admission, appeal process, discharge/eviction, and room issues.

**Autonomy, Choice, Rights (Code D)** – Complaints against the facility staff failure to honor and promote a resident’s right or preferences. Including choice in health care, living in the least restrictive setting, dignity and respect, privacy, response to complaints, retaliation, visitors, resident/family council, other rights and preferences.

**Financial, Property (Code E)** – Complaints involving facility staff mismanagement of residents’ funds and property or billing problems.

**Care (Code F)** – Complaints involving facility staff failure to provide care including, poor quality, planning and delivery. Examples include but are not limited to accidents and falls, response to requests for assistance, care planning, medications, personal hygiene, access to health related services, symptoms unattended, incontinence care, assistive devices or equipment, rehabilitation services, physical restraint, chemical restraint, and infection control.

**Activities, Community Integration and Social Services (Code G)** – Complaints regarding activities, transportation, conflict resolution, and social services.

**Dietary (Code H)** – Complaints regarding food services, assistance, dining, hydration, and therapeutic or special diet.

## Complaint Category Definitions Continued ....

**Environment (Code I)** – Complaints involving the physical environment of the facility, including the resident’s space, building structure, accessibility, housekeeping, laundry, pest abatement, supplies, storage, and furnishings.

**Facility policies, procedures, and practices (Code J)** – Complaints involving acts of commission or omission by facility leadership/owners, administrative oversight, fiscal management, and staffing.

**Complaints about an outside agency (non-facility) (Code K)** – Complaints involving decisions, policies, actions or inactions by the regulatory system, Medicaid, managed care, veterans’ affairs, private insurance, and/or Medicare.

**Systems, others (non-facility) (Code L)** – Complaints involving resident representatives, family conflict, services from outside provider, or request to transition to a community setting.<sup>2</sup>



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<sup>2</sup> [https://ltcombudsman.org/uploads/files/support/NORS\\_Table\\_2\\_Complaint\\_Code\\_10-31-2024.pdf](https://ltcombudsman.org/uploads/files/support/NORS_Table_2_Complaint_Code_10-31-2024.pdf)

## Top Five Complaints

### As Reported to the South Dakota Long Term Care Ombudsman Program

#### Nursing Home

<b>FFY 2021</b>	<b>FFY 2020</b>	<b>FFY 2019</b>
Care	Care	Abuse, Gross Neglect, Exploitation
Autonomy, Choice, Rights	Abuse, Gross Neglect, Exploitation	Care
Abuse, Gross Neglect, Exploitation	Autonomy, Choice, Rights	Admission, Transfer, Discharge, Eviction
Admission, Transfer, Discharge, Eviction	Admission, Transfer, Discharge, Eviction	Autonomy, Choice, Rights
Financial, Property	Financial, Property	Facility Policies, Procedures, and Practices

#### Board and Care Homes

<b>FFY 2021</b>	<b>FFY 2020</b>	<b>FFY 2019</b>
Autonomy, Choice, Rights	Autonomy, Choice, Rights	Care
Care	Admission, Transfer, Discharge, Eviction	Autonomy, Choice, Rights
Abuse, Gross Neglect, Exploitation	Care	Abuse, Gross Neglect, Exploitation
Admission, Transfer, Discharge, Eviction	Abuse, Gross Neglect, Exploitation	Admission, Transfer, Discharge, Eviction
Dietary	Environment	Facility Policies, Procedures, and Practices

## When Should I Contact the Long Term Care Ombudsman Program?

- ❖ If a resident is being discharged from a facility against their wishes
- ❖ To report an issue or concern
- ❖ Ask for help addressing care concerns
- ❖ Get information when beginning to consider out of home placement
- ❖ When a loved one has dementia, and you are considering out of home placement options
- ❖ Other concerns regarding quality of care or quality of life in long term care settings



## Barriers, Efforts, and Recommendations

### ❖ Barrier:

Lack of understanding of the dementia disease diagnosis continues to be a barrier to residents receiving informed person-centered care.

### ❖ Efforts:

Increasing understanding of dementia and training:

- The LTCOP was awarded a two- year grant totaling \$201,184 for dementia care education and culture change. The funding comes from the Civil Monetary Penalty (CMP) Fund, administered by the DOH. The grant will be awarded starting in 2022.
- All LTCO are certified dementia practitioners through the National Council of Certified Dementia Practitioners.
- The LTCOP utilized Coronavirus Aid, Relief, and Economic Security Act (CARES) Act funds directed to the program through the Administration for Community Living to purchase dementia simulation kits to utilize when presenting information on resident rights to nursing facilities and assisted living centers. These simulation kits provide the opportunity for facility staff to experience life through the viewpoint of residents by utilizing tools, which simulate the various disabilities experienced by residents including, low vision, impaired hearing, decreased mobility, dementia, and auditory hallucinations, etc. The LTCOP will provide ongoing use of the dementia simulation kits to help gain awareness of what a person living with dementia may experience.
- In February of 2021, the Department of Human Services designated a State Alzheimer's/Dementia Coordinator, which the LTCOP supported and works in partnership regarding Alzheimer's and dementia.

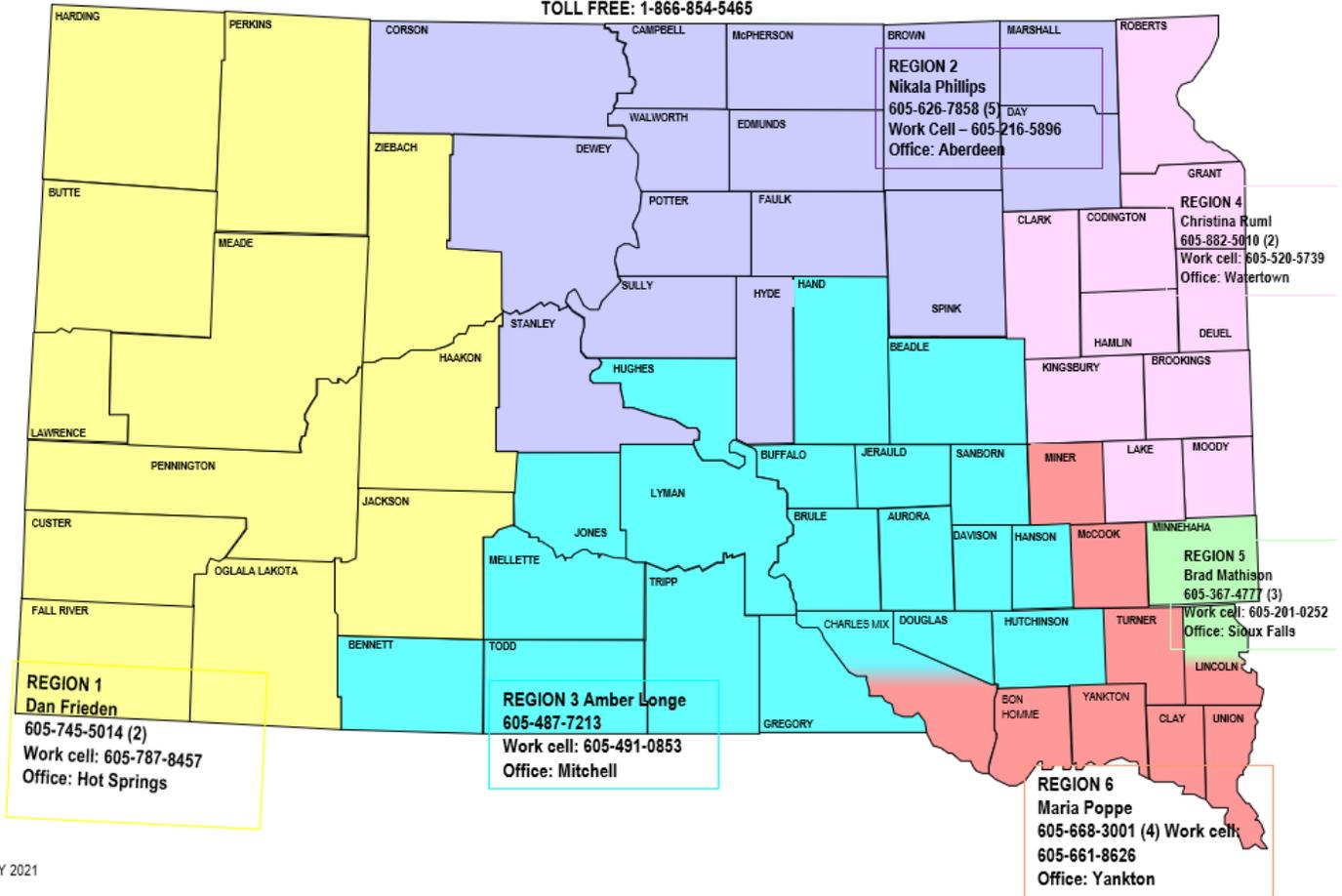
### ❖ Recommendations:

Continue the above efforts and look for additional ways to improve dementia care.

# Long Term Care Ombudsman Program Team

## Long-Term Care Ombudsman Program Regions

TOLL FREE: 1-866-854-5465



FFY 2021



**SOUTH DAKOTA  
STATE LONG-TERM CARE  
OMBUDSMAN PROGRAM**

Your Life. Your Rights. Your Voice.

